IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 117 OF 2006

The Commissioner of Central
Excise, Thane-II. ... Appellant.
V/s.
M/s.Ram Laminates (I) Pvt.Ltd. ... Respondent.

WITH

CENTRAL EXCISE APPEAL NO. 120 OF 2006

The Commissioner of Central
Excise, Thane-II. ... Appellant.
V/s.
Shri V.M.Belsare. ... Respondent.

WITH

CENTRAL EXCISE APPEAL NO. 121 OF 2006

The Commissioner of Central
Excise, Thane-II. ... Appellant.
V/s.
M/s.Ramabatar R. Jhunjhunwala. ... Respondent.

WITH

CENTRAL EXCISE APPEAL NO. 122 OF 2006

The Commissioner of Central
Excise, Thane-II. ... Appellant.
V/s.
M/s.Rammaica (India) Ltd. ... Respondent.

WITH

CENTRAL EXCISE APPEAL NO. 124 OF 2006

The Commissioner of Central
Excise, Thane-II. ... Appellant.
V/s.
Shri Raj Lunkar. ... Respondent.

WITH

CENTRAL EXCISE APPEAL NO. 149 OF 2006

The Commissioner of Central
Excise, Thane-II. ... Appellant.
V/s.
M/s.Hanuman Laminates Pvt.Ltd. ... Respondent.

WITH

CENTRAL EXCISE APPEAL NO. 153 OF 2006

The Commissioner of Central
Excise, Thane-II. ... Appellant.
V/s.

Shri Vijay Kumar Beriwal. ... Respondent.

WITH

CENTRAL EXCISE APPEAL NO. 169 OF 2006

The Commissioner of Central
Excise, Thane-II. ... Appellant.
V/s.
Shri Ajit Kumar D. Tannu ... Respondent.

K.R.Chaudhary with S.M.Shah and N.D.Sharma
for the appellant.

S.P.Mathew i/b. V.B.Kanoria for the respondents.

CORAM : DR.S.RADHAKRISHNAN
and V.C.DAGA, JJ.

DATED : 19th April 2007.

P.C. :

. Heard learned counsel for the appellant and learned counsel for the respondents.

2. We have perused the order of the Customs, Excise and Service Tax Appellate Tribunal, Mumbai ("CESTAT"). The operative part of the said order reads as under:

> "1. RMIL and the marketing units are related persons.
>
> 2. Assessable value cannot be determined under Section 4(1)(a)(3) of the Central Excise Act as the same goods are sold to unrelated buyers as well Commissioner's finding that the price at which the related parties sold the goods to other independent buyers has to be adopted for assessment is set aside.
>
> 3. The finding of the Commissioner that 'A" grade sheets were mis-declared as 'C' and 'D' thereby evading

appropriate duty leviable on them is upheld. Duty involved be calculated at the price at which 'A' grade sheets are sold to unrelated buyers. they duty leviable be re-determined.

4. Penalties on RMIL, MPLP and Balram Jhunjhunwala after computing the correct duty as stated in (3) above.

5. Penalties on other set aside.

6. Confiscation of goods set aside.

3. In the above order, the present appeal has been filed raising question of law with regard to penalties in respect of "A" grade sheets. The penalties on others have been set aside. The Tribunal while setting aside the penalties has clearly observed that penalties on RMPL and HMPL are not imposable as the records suggested that they had not received the mis-branded goods and had no role to play, as such no reason to sustain any penalties on them. The entire proceedings initiated are on the undervaluation of the goods, and based on the same penalties have been imposed. In the above, all the matters clearly pertain to valuation of goods for the purpose of assessment. As per section 35G of the Central Excise Act, 1944, appeals before this Court are incompetent. Hence we dismiss all the appeals. However, the appellants would be at liberty to move before the Hon'ble Supreme Court.

(V.C.DAGA, J.) **(DR.S.RADHAKRISHNAN, J.)**